

RECOVERY AND RESILIENCE FACILITY – STATE AID

Guiding template: Premiums for the acquisition of zero- and low-emission road vehicles

Link to European Flagship: Recharge and Refuel

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I. Objective of the guiding template

1. The coronavirus pandemic has changed the economic outlook for the years to come in the European Union. Investments and reforms in the context of the Recovery and Resilience Facility (the “Facility”) are contributing to convergence and a sustainable economic recovery. Carrying out reforms and investing in the EU’s common priorities, notably green, digital and social resilience will help create jobs and sustainable growth, while modernising our economies, and allow the EU to recover in a balanced, forward-looking and sustained manner.
2. The Facility aims at mitigating the economic and social impact of the coronavirus pandemic and at making the EU economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the twin green and digital transitions. The Facility is also at the heart of the implementation of the REPowerEU Plan,¹ the Commission’s response to the socio-economic hardships and global energy market disruption caused by Russia's invasion of Ukraine. Therefore, if Member State want to obtain additional financing for key investments and reforms that will help achieve the REPowerEU objectives, they must add a REPowerEU chapter to their national recovery and resilience plans.²
3. The objectives of REPowerEU are, amongst others, to increase the resilience, security and sustainability of the EU’s energy system through the needed decrease of dependence on fossil fuels and diversification of energy supplies at EU level, including by increasing the uptake of renewables, energy efficiency and energy storage capacity.
4. State aid rules apply in the framework of the Facility. Member States should therefore ensure that all investments comply with the EU State aid rules and follow all regular procedures and rules.³

¹ Commission staff working document, REPowerEU Plan, COM(2022) 230 final, 18.5.2022

² See Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulations (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC, OJ L 63, 28.2.2023, p. 1.

³ See Commission staff working document - Guidance to Member States Recovery and Resilience Plans - Part 1, SWD(2021) 12 final, published 22.1.2021 (https://commission.europa.eu/document/7c55aadf-6b8d-4d9c-a930-bc7ef8656de1_en) and Commission Notice- Guidance on Recovery and Resilience Plans in the context of REPowerEU, 2023/C 80/01 published on 3.3.2023 (<https://eur-lex.europa.eu/legal->

5. With this guiding template, DG Competition aims at assisting Member States with the State aid elements of their recovery plans and the dedicated REPowerEU chapters, and to provide guidance on the State aid-related aspects of those investments which are expected to be common to most of those plans.
6. The investments covered by this guiding template have been chosen in line with the European flagships of the Commission's Annual Sustainable Growth Strategy 2021.⁴ The template has been updated because of its relevance for investments and reforms contributing to REPowerEU objectives.
7. The guiding template follows a uniform structure, providing sector-specific guidance as to when:
 - i. Instances in which the existence of State aid may be excluded, and therefore prior notification to the Commission is not necessary.
 - ii. State aid would be involved but no notification is necessary, and specific rules may apply (in case of aid exempted from the notification obligation); and
 - iii. State aid would be involved and a notification is necessary, with reference to the main applicable State aid rules.
8. The guiding template also contains 'boxes' with examples of the State aid assessment of the investments and reforms contained in the components published by the Commission,⁵ per flagship. The aim is merely illustrative, to provide additional clarifications to Member States on the State aid assessment contained in those components.

II. Description of the investment

9. The investments under this guiding template will contribute to the *Recharge and Refuel* flagship,⁶ promoting future-proof clean technologies to accelerate the use of sustainable, accessible and smart transport, charging and refuelling stations and extension of public transport. In this context, providing support for the acquisition of zero- and low-emission vehicles is a crucial step for a wider deployment of clean vehicles.
10. This guiding template therefore covers support granted by Member States for the acquisition (including leasing) of zero- and low-emission road vehicles, both new and used, such as bikes, scooters, cars, vans, trucks and buses⁷. Direct or indirect support to

content/EN/TXT/PDF/?uri=CELEX:52023XC0303(01)&from=EN). Also, the relevant public procurement rules must be respected, where applicable.

⁴ Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank — Annual Sustainable Growth Strategy 2021, COM/2020/575 final.

⁵ Available at https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en#example-of-component-of-reforms-and-investments.

⁶ More information on this flagship can be found here: https://ec.europa.eu/info/files/example-component-reforms-and-investments-clean-smart-and-fair-urban-mobility_en.

⁷ In the Commission State aid decisional practice, Member States generally identified themselves the types of vehicles eligible for support, also depending on the greenhouse gas emissions reduction targeted by the measure concerned. However, their emissions must at minimum be below thresholds resulting from EU standards. When defining the scope of their support measures, Member States should take due account of the existing definition of zero- and low-emission vehicle contained in Regulation (EU) 2019/631 of the

the manufacturers of zero- and low-emission vehicles (including for the upstream research and development) is excluded from the scope of this guiding template.⁸ Eligible vehicles are identified by Member States on the basis of the capability of such vehicles to contribute to the environmental objective of reducing greenhouse gas emissions.

11. The support is often provided in the form of a bonus (or a so-called premium) for the buyer covering part of the acquisition costs. However, the same principles apply to other forms of aid (e.g., tax reductions).

III. Instances in which the existence of State aid may be excluded

12. The following sections present a comprehensive, but not exhaustive, number of separate instances in which the application of State aid rules or the existence of State aid may be excluded. Given the cumulative nature of the criteria of Article 107(1) TFEU, if one of the following criteria is not met, the presence of State aid can be excluded and therefore there is no need to notify the measure to the Commission prior to its implementation.
13. This guiding template focuses on aid at the level of the final beneficiary, i.e., the buyer of the vehicle.

A. No economic activity

14. Aid for activities, which are not of an economic nature, i.e., do not consist in the offering of goods or services on the market, are not considered State aid. Therefore, if the vehicles are used for private (personal or family) purposes by individuals in their own capacity who are not involved in economic activities, the support measures do not qualify as State aid to the buyer.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

Investment 2: Introduce a scrapping scheme for the most polluting vehicles: *The direct beneficiaries of the scrapping scheme are individual consumers, which would normally exclude the presence of State aid. [...]*

15. However, if the buyer is an undertaking and the vehicles are used to perform economic/commercial activities, support for those vehicles may constitute State aid to that buyer.
16. Furthermore, financial support for the acquisition of vehicles used for activities that the State normally performs in the exercise of its public powers or that are not used for offering goods or services on a market normally also falls outside the scope of State aid rules. For instance, zero- or low-emission vehicles purchased by public authorities to be

European Parliament and of the Council setting CO2 emission performance standards for new passenger cars and for new light commercial vehicles and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011 (OJ L 111, 25.4.2019, p. 13).

⁸ Other vehicles not used for transport purposes but rather in the production process of certain economic activities (such as low emission tractors in primary agricultural production or fishing vessels) are also not covered by this guiding template.

used exclusively by police or fire brigade may not involve State aid as they would not be used to carry out an economic activity.

B. No State resources

17. Measures that do not involve the transfer of public resources exclude the existence of State aid⁹. For example, a legislative initiative merely imposing certain minimum targets to buy or procure a certain number of zero- or low-emission vehicles¹⁰ without deploying public funding for that purpose may not involve State resources¹¹.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

Reform 2: Progressively phase out the most polluting vehicles in most polluted urban areas: *As long as the applicable legislation aims at removing the most polluting vehicles from circulation in the most polluted areas and does not provide for compensation for phasing out and scrapping those vehicles, there should not be State aid concerns. [...]*

Reform 4: Simplify and harmonize permitting procedures for alternative fuels infrastructure: *Measures to make permit procedures leaner and quicker and to ensure transparency of the network data do not normally involve State resources and therefore do not fall under State aid rules. Access to data will be provided in principle on an open access basis and without favouring any particular undertaking thereby excluding any potential competition/ state aid concerns. [...]*

C. No selectivity

18. Measures that are of general application and do not favour certain undertakings, or the production of certain goods, are not selective and do not constitute State aid. This can be the case, for example, of a general tax reform. In such cases, selectivity is normally assessed based on a three-step analysis.¹²
19. The selective character of a measure may also stem from the discretion of the administration in the implementation of a scheme, *e.g.*, where eligibility for a generally applicable scheme is not based on the fulfilment of objective criteria and involves a margin of discretion of the granting authority. On this basis, a *prima facie* generally applicable measure (not targeting a specific sector or an identified group of undertakings) is selective where meeting the criteria set out therein does not automatically result in an entitlement to receive support¹³. For individual measures, the finding of economic advantage allows to presume selectivity.

⁹ The concept of ‘transfer of public resources’ covers many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies and benefits in kind. A positive transfer of funds does not have to occur; foregoing State revenue is sufficient. In addition, the measure must be imputable to the State. See Notice on the notion of State aid, section 3.

¹⁰ For example, Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles.

¹¹ Note that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

¹² Notice on the notion of State aid, section 5.2.3.

¹³ Please note, however, that the fact that a measure requires prior administrative authorisation does not automatically mean that it constitutes a selective measure. This is not the case where a prior administrative authorisation is based on objective, non-discriminatory criteria which are known in advance, thus circumscribing the exercise of the public administrations’ discretion.

20. Measures which are not designed to selectively favour a specific undertaking or sector and are *de jure* and *de facto* open to all actual and potential operators are regarded as general in nature and thus do not constitute State aid.¹⁴ This does not mean that support measures must include all available technologies to be qualified as general, even though technological neutrality may be a strong indication that the measure is not selective.
21. Based on the abovementioned principles, measures targeting one or a number of specific groups of undertakings (e.g., taxi companies and/or bus operators) are not considered general in nature and normally involve State aid to those buyers. These measures normally provide those undertakings with a selective advantage consisting of relieving them from part of costs inherent to their economic activity, which they would normally have to bear themselves.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

Reform 1: Create the framework for cities/agglomerations to adopt and implement individual Sustainable Urban Mobility Plans (SUMP): *Drawing up SUMPs should not as such raise State aid concerns. If in the context of the financial framework for the implementation of SUMPs, it appears that support may be granted to undertakings performing economic activity, which could constitute a selective advantage, then the SUMP will take into consideration State aid rules. [...]*

Reform 4: Simplify and harmonize permitting procedures for alternative fuels infrastructure: *Measures to make permit procedures leaner and quicker and to ensure transparency of the network data do not normally involve State resources and therefore do not fall under State aid rules. Access to data will be provided in principle on an open access basis and without favouring any particular undertaking thereby excluding any potential competition/ state aid concerns. [...]*

Investment 2: Introduce a scrapping scheme for the most polluting vehicles: *The direct beneficiaries of the scrapping scheme are individual consumers, which would normally exclude the presence of State aid. Moreover, in order to exclude any potential indirect aid, the scheme will be general and open to any owner of a vehicle that predates the Euro X standard willing to scrap his/her car and purchase an alternative vehicle or a public transport pass. The criteria to be met by the applicants will be defined in an objective and non-discriminatory manner, avoiding any indirect preferential treatment to one or more manufacturers of alternative vehicles. [...]*

D. No advantage

22. Where the acquisition of zero- or low-emission vehicles is necessary for the discharge of public service obligations, the premium should be regarded as reducing the costs to be taken into account for the purposes of calculating the compensation to be paid to the undertaking carrying out its public service obligations.
23. In those cases, the existence of an economic advantage at the level of the operator may be excluded, if the following cumulative conditions are met:¹⁵
- i. the zero- or low-emission vehicle is necessary for the discharge of a public service obligation clearly defined;¹⁶

¹⁴ Notice on the notion of State aid, paragraph 118.

¹⁵ Judgment of 24 July 2003, *Altmark Trans*, C-280/00, EU:C:2003:415, paragraphs 87-95.

¹⁶ The act or series of acts must at least specify: (a) the content and duration of the public service obligations; (b) the undertaking and, where applicable, the territory concerned; (c) the nature of any exclusive or

- ii. the parameters of compensation are established in advance in an objective and transparent manner;
- iii. the compensation does not exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit; and
- iv. where the undertaking that is to discharge public service obligations is not chosen following a public procurement procedure, the level of compensation is determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with means to meet the public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

E. No effect on trade between Member States and no distortion of competition

- 24. Where a measure strengthens the competitive position of the benefitting undertakings compared to that of actual or potential competitors that are not eligible for the measure, it is considered to have potentially distorting effects on competition.¹⁷
- 25. Measures are considered capable of affecting trade between Member States where they strengthen the position of an undertaking (*i.e.*, the buyers of the vehicles in this case, which qualify as undertakings) as compared to other undertakings competing in intra-Union trade.¹⁸ In principle, premiums for the acquisition of zero- and low-emission vehicles are capable of affecting trade between Member States, as they may strengthen the position of the beneficiaries in relation to their competitors in the Union.
- 26. The relatively small amount of the measure or size of the beneficiary do not exclude the possibility that trade between Member States might be affected.¹⁹
- 27. The distortion of competition and effect on trade can, however, be excluded in cases of very limited amounts of aid (“*de minimis* aid”). *De minimis* aid is not considered State aid and therefore there is no need for prior approval from the Commission. Member States do not even have to inform the Commission of such aid.
- 28. Aid is considered to be *de minimis* if the total amount of aid granted per Member State to a single undertaking does not exceed EUR 200 000 over any period of three fiscal years and the other conditions laid down in the *de minimis* Regulation are respected.²⁰ Notably, the aid must be ‘transparent’ within the meaning of Article 4 of the Regulation (*i.e.*, it must be possible to calculate precisely the gross grant equivalent of the aid *ex ante* without a risk assessment), the EUR 200 000 threshold must be respected in case of cumulation with any other public support granted to the same beneficiaries under the

special rights assigned to the undertaking by the authority in question; (d) the parameters for calculating, controlling and reviewing the compensation; and (e) the arrangements for avoiding and recovering any overcompensation.

¹⁷ Notice on the notion of State aid, paragraph 187.

¹⁸ Notice on the notion of State aid, paragraph 190.

¹⁹ Notice on the notion of State aid, paragraph 192.

²⁰ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L352, 24.12.2013, p. 1.

de minimis Regulation, and the cumulation rules set out in the Regulation must be complied with.

29. Where the acquisition of zero- or low-emission vehicles is necessary for the provision of a Service of General Economic Interest ('SGEI'), costs for the purchase of zero- or low-emission vehicles may be covered by the compensation paid by the Member State for the provision of the SGEI. Public funding granted for the provision of an SGEI²¹ in sectors other than land transport²² not exceeding EUR 500 000 over three years is not regarded as State aid, provided the conditions of the SGEI *de minimis* Regulation are fulfilled.

IV. Instances in which there is no need to notify for State aid clearance, but other requirements may apply

30. If a given investment meets the cumulative conditions of Article 107(1) TFEU and thus entails State aid, it may be considered compatible with the internal market and can be granted without notification in the following instances:

A. Aid covered by an existing State aid scheme (conditions for no notification)

31. If a Member State plans to grant State aid under an aid scheme already approved by Commission decision, it does not need to notify the scheme again to the Commission for approval and can directly provide the support to the beneficiary, as long as the conditions of the authorisation decision are complied with.
32. Moreover, any increase of up to 20% of the original budget of an aid scheme already approved by Commission decision is not considered an alteration to existing aid. If this is the only change to a scheme already authorised by the Commission, it does not need to be re-notified to the Commission for approval²³.
33. In any event, full compliance with Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility²⁴ should be ensured (see in particular Article 17(2)).

²¹ *E.g.*, compensation granted to undertakings for the provision of postal services entrusted as an SGEI may cover costs for the zero- or low-emission vehicles necessary for the provision of that SGEI, where the Member State concerned has imposed the use of such vehicles for the provision of that SGEI.

²² Article 106 TFEU, the SGEI *de minimis* Regulation, the SGEI Decision and the SGEI Framework do not apply to public service compensation in the land transport sector. Indeed, Article 93 TFEU, laying down the rules applicable to public service compensation in the land transport sector, constitutes a *lex specialis* with regard to Article 106(2) TFEU.

²³ In case of budget increases to already authorised schemes exceeding 20 % and/or their prolongation up to 6 years, the so-called simplified notification procedure under Article 4 of the Implementing Regulation (Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140, 30.04.2004, p. 1) can be used, whereby the Commission aims to complete the assessment of notified State aid measures within one month.

²⁴ OJ L 57, 18.2.2021, p. 17.

B. General Block Exemption Regulation (GBER)²⁵

34. In cases where the Commission has gained sufficient experience with a given kind of State aid, it may block exempt such State aids, i.e. the Member States do not have to notify them. They only have to inform the Commission thereof.
35. The GBER provisions on aid in the field of climate, environmental protection and energy recently underwent a targeted revision aimed at further facilitating support for green projects, without the need for prior approval from the Commission. The text of an amendment to the GBER was endorsed by the Commission on 9 March 2023.²⁶ The amendment to the GBER will enter into force the day following its publication in the Official Journal. Once the amended GBER provisions enter into force, they will apply retroactively to individual aid granted before their entry into force. For existing aid measures, Member States will need to adapt any schemes to comply with the amended GBER within 6 months following its entry into force. For a full picture of the transitional provisions, please see Article 58 GBER. Subsequent references to the GBER refer to the GBER as amended in the endorsed text.
36. Hence, measures supporting the acquisition of clean vehicles²⁷ or zero-emission vehicles²⁸ for road, railway, inland waterway and maritime transport and for the retrofitting of vehicles other than aircraft to qualify as clean vehicles or as zero-emission vehicles are exempted from the notification obligation if the aid is granted in compliance with the conditions set out in Article 36b GBER. This provision allows investment aid of up to EUR 30 million per undertaking per project. The eligible costs²⁹ shall be:
- (a) for investments consisting in the purchase of clean vehicles or zero-emission vehicles, the extra costs of purchasing the clean vehicle or the zero-emission vehicle. Those shall be calculated as the difference between the investment costs of purchasing the clean vehicle or the zero-emission vehicle and the investment costs of purchasing a vehicle of the same category that complies with applicable Union standards already in force and would have been acquired without the aid;
 - (b) for investments consisting in the leasing of clean vehicles or zero-emission vehicles, the extra costs of leasing the clean vehicle or the zero-emission vehicle. Those shall be calculated as the difference between the net present value of leasing the clean vehicle or the zero-emission vehicle and the net present value of leasing a vehicle of the same category that complies with applicable Union standards already in force and would have been leased without the aid. For the purposes of determining the eligible costs, the operating costs linked to the operation of the vehicle, including energy costs, insurance costs and maintenance costs, shall not be

²⁵ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

²⁶ The full text endorsed by the Commission is available here: https://competition-policy.ec.europa.eu/document/8d68e6c3-763a-41db-9e34-42f90bc5e892_en.

²⁷ 'Clean vehicle; for road transport is defined in Article 2(102f) GBER.

²⁸ 'Zero-emission vehicle' for road transport is defined in Article 2(102g) GBER.

²⁹ Please note that the references to 'eligible costs' in this guiding template are to be understood exclusively for the purposes of State aid. Therefore, they have no bearing on whether a particular measure and its associated cost can be financed or not by the Facility.

taken into account, irrespective of whether they are included in the leasing contract;

- (c) for investments consisting in the retrofitting of vehicles allowing them to qualify as clean vehicles or zero-emission vehicles, the costs of the investment in the retrofitting.
37. To be exempted from the notification obligation, all the conditions laid down in Article 36b GBER, in addition to the general conditions set out in Chapter I, would need to be complied with.
 38. The aid shall be granted following a competitive bidding process. In this case, the aid intensity may reach up to:
 - (a) 100% of the eligible costs for the purchase or the leasing of zero-emission vehicles or the retrofitting of vehicles allowing them to qualify as zero-emission vehicles.
 - (b) 80% of the eligible costs for the purchase or the leasing of clean vehicles, or of the retrofitting of vehicles allowing them to qualify as clean vehicles.
 39. Aid may be granted in the absence of a competitive bidding process when the aid is granted based on an aid scheme. In this case, the aid intensity shall not exceed 20% of the eligible costs. The aid intensity may be increased by 10 percentage points for zero-emission vehicles and by 20 percentage points for medium-sized enterprises or by 30 percentage points for small enterprises.
 40. Aid may also be granted without a competitive bidding process when the aid is granted for undertakings that have been awarded - following an open, transparent and non-discriminatory public tender - a public service contract for the provision of public passenger transport services by land, rail or water. In this case, the aid intensity shall not exceed 40% of the eligible cost. The aid intensity may be increased by 10 percentage points for zero-emission vehicles

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

Investment 1: Create a subsidy scheme to allow cities/agglomerations to procure smart, safe and clean public transport fleets, and their related infrastructure, as well as publicly accessible recharging/refuelling points for private and commercial zero and low emissions vehicles: *In case State aid would be present, local managing authorities have several tools at their disposal to ensure compatibility of the aid. First and foremost, local managing authorities can apply the General Block Exemption Regulation (GBER) to increase the share of clean or zero-emission- either new or retrofitted - vehicles (in particular the provisions on investment aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles). If the GBER requirements are met, the measure does not require prior notification to the Commission and can be immediately implemented. If the GBER conditions cannot be met, local managing authorities should notify the aid under the CEEAG for approval. [...]*

C. Service of General Economic Interest

41. If the acquisition of zero- or low-emission vehicles is necessary for the provision of services that are entrusted as an SGEI and those vehicles are intended to be used exclusively by the beneficiary to fulfil its public service obligations, its purchase may be considered as part of the SGEI and therefore the acquisition may be financed in

compliance with the applicable State aid rules on SGEIs³⁰. This is, in particular, the case where the Member State concerned imposes the use of zero- or low-emission vehicles for the provision of the SGEI. Depending on the sector concerned, compatibility of SGEI compensation qualifying as State aid is assessed under Articles 106(2) or 93 TFEU.

a. Regulation (EC) No 1370/2007³¹

42. Compensation for SGEI in the area of public passenger transport by road should be established in line with the provisions of Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road. If the conditions set out in that Regulation are complied with, aid to the service provider is exempted from prior notification to the Commission³².

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

Reform 3: Support the deployment of sustainable shared mobility services: *State aid rules are no hurdle to public service contracts including sustainable mobility services. However, if a running public service contract needs to be amended as a result of this initiative, local authorities will take into consideration the applicable EU framework. [...]*

b. SGEI Decision³³

43. Where the acquisition of zero- or low-emission vehicles is necessary for the provision of an SGEI in sectors other than land transport (e.g., in the postal sector), the compatibility of the aid measure supporting such acquisition may be assessed as part of the SGEI compensation, on the basis of Article 106(2) TFEU.
44. State aid for the compensation of an SGEI up to EUR 15 million per year (on average over the whole duration of the entrustment) is exempted from notification on the basis of the SGEI Decision, provided that the criteria of that Decision are met. These are: (i) definition and entrustment of the SGEI, (ii) parameters of compensation

³⁰ Where the same zero- or low-emission vehicles are used both to discharge public service obligations and to operate commercial routes, there may be a risk that the support is used to cross-subsidise commercial activities of the beneficiary. To avoid the risk that the compensation allocated exceeds the net cost of the SGEI and thus involves overcompensation, undertakings carrying out activities falling both inside and outside the scope of an SGEI must keep accounts that show separately the SGEI's costs and receipts, and those linked to other services.

³¹ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1.

³² For additional guidance on the application of Regulation (EC) No 1370/2007, please see the guiding template on “*Other low emission transport modes – rail and inland waterway (rail infrastructure, transshipment terminals, rail maintenance workshops, acquisition / retrofitting of rail rolling stock and acquisition/retrofitting of inland waterway fleet) and short-sea shipping (aid for the launching of short-sea shipping services)*”.

³³ Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L7, 11.1.2012, p. 3.

established ex ante in a transparent manner, (iii) amount of compensation not exceeding the costs for the provision of the SGEI and a reasonable profit, and (iv) a mechanism to ensure the absence of overcompensation.

V. Instances in which notifying for State aid clearance is necessary

45. If the measure constitutes State aid and does not meet the conditions allowing an exemption from notification, a notification to the Commission for State aid clearance is required. The aim of the present section is to assist Member States in identifying and providing the necessary information to the Commission in the context of pre-notifications and notifications, bearing in mind that the Commission will assess all State aid notifications received from Member States in the context of the Facility as a matter of priority.

A. Procedure for pre-notification and notification

46. In case the planned investment entails State aid and is not exempt from notification, the Member State should, in compliance with Article 108(3) TFEU, proceed to notify the measure to the Commission for approval before implementation.

47. The Commission is committed to assess and treat those cases as a matter of priority and to engage with national authorities early on, in order to address problems in ‘real time’ in the context of the preparation of their Recovery and Resilience Plans. Therefore, informal contacts and pre-notifications are encouraged as soon as possible.

48. The Commission aims to complete the assessment of notified State aid measures within six weeks of receiving a complete notification from the Member State.

B. Relevant legal bases for compatibility with the Treaty

a. Guidelines on State aid for climate, environmental protection and energy 2022 (“CEEAG”³⁴)

49. Aid for the acquisition and leasing of new or used clean vehicles³⁵ and clean mobile service equipment is assessed under Section 4.3.1 of the CEEAG. Aid for retrofitting, refitting and adaptation of vehicles or mobile service equipment where it allows them to qualify as clean vehicles or clean mobile service equipment is also assessed under this section. Aid for investments in light duty and heavy-duty road vehicles using gas (notably, LNG, CNG and biogas) falls outside the scope of the CEEAG³⁶.

50. When carrying out its compatibility assessment under Section 4.3.1 of the CEEAG, the Commission will take into account the following aspects.

51. First, to be found compatible under the CEEAG, the aid must facilitate an economic activity, and not entail a breach of relevant EU law.

³⁴ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, C/2022/481, OJ C 80, 18.2.2022, p. 1–89.

³⁵ See definitions of clean vehicles per transport mode (point 19(20) CEEAG) and of “clean mobile service equipment” (point 20(17)-(19) CEEAG).

³⁶ See point 159 CEEAG.

52. Second, the aid must have an incentive effect, meaning that the aid must change the beneficiary's behaviour, e.g., the beneficiary would not buy the vehicle at issue without the aid. The Member State concerned must provide a credible counterfactual scenario in the absence of the aid. A counterfactual scenario corresponds to an investment with the same capacity, lifetime and, where appropriate, other relevant technical characteristics as the environmentally-friendly investment.
- i. Where the investment concerns the acquisition or leasing of clean vehicles or clean mobile service equipment, the counterfactual scenario generally is the acquisition or the leasing of vehicles or mobile service equipment of the same category and the same capacity that would be acquired or leased without the aid.
 - ii. The counterfactual scenario might correspond to maintaining the existing vehicle or mobile service equipment in operation for a period corresponding to the lifetime of the environmentally-friendly investment. In that case, the discounted maintenance, repair and modernisation costs over that period should be taken into account.
 - iii. In other cases, the counterfactual scenario may consist in a later replacement of the vehicle or mobile service equipment, in which case the discounted value of the vehicle or mobile service equipment should be taken into account and the difference in the respective economic lifetime of equipment should be equalised.
 - iv. In the case of vehicles or mobile service equipment subject to leasing arrangements, the discounted value of the leasing of the clean vehicles or clean mobile service equipment should be compared with the discounted value of the leasing of the less environmentally-friendly vehicle or mobile service equipment that would be used in the absence of the aid.
 - v. Where the investment consists of adding equipment to an existing vehicle or mobile service equipment to improve its environmental performance (for example, retrofitting of pollution control systems), the eligible costs may consist of the total investment costs.
53. Third, the aid must be an appropriate instrument to achieve the development of the economic activity at issue. The Member State concerned must demonstrate that: (i) alternative policy options would not be equally suitable to achieve that increased economic activity; and (ii) alternative, less distortive, aid instruments would not deliver equally efficient outcomes. The assessment of appropriateness should consider the potential for other types of interventions than State aid and their expected impact compared to the aid, e.g.: general measures promoting the acquisition of clean vehicles (scrappage schemes, general ecological bonuses), the introduction of 'zero/low emission zones' in cities.
54. Fourth, the aid must be proportionate. As a general rule, the aid must be granted following a competitive bidding process. The design of the competitive bidding process must ensure that sufficient incentives remain for applicants to bid for projects concerning the acquisition of zero-emission vehicles. For example, environmental criteria may be designed as premiums allowing a higher score to be assigned to projects bringing environmental benefits beyond those deriving from the eligibility requirements or the primary objective of the measure. Where appropriate, bid caps

may be introduced and should be justified on the basis of quantification of costs and revenues.

55. Aid may be granted without a competitive bidding process in the following cases: (a) where the expected number of participants is not sufficient to ensure effective competition or avoid strategic bidding; (b) where the Member State provides adequate justification that a competitive bidding process is not appropriate to ensure the proportionality of the aid and that using the alternative methods would not increase the risk of undue distortions of competition, depending on the characteristics of the measure or of the sectors or transport modes concerned; or (c) where it is granted for the acquisition or leasing of vehicles intended for use by undertakings active in the sector of public passenger transport by land, rail or water.
56. In these cases, the aid may be considered proportionate if it does not exceed 40 % of the eligible costs. The aid intensity may be increased by 10 percentage points for zero-emission vehicles and by 10 percentage points for medium-sized enterprises or by 20 percentage points for small enterprises. The eligible costs are the net extra costs of the investment. These are calculated as the difference, on the one hand, between the total cost of ownership of the clean vehicle foreseen to be acquired or leased, and on the other hand the aid and the total cost of ownership in the counterfactual scenario. As regards the retrofitting of vehicles or mobile service equipment, the eligible costs may be the total costs of the retrofitting, provided that in the counterfactual scenario the vehicles or mobile service equipment retain the same economic life in the absence of the retrofitting.
57. Member State may also demonstrate, based on a funding gap analysis, that a higher aid amount is required. In such a case, the Member State must conduct an ex post monitoring to verify the assumptions made about the level of aid required and put in place a claw-back mechanism. The aid amount must not exceed the funding gap. In case of individual aid, the aid amount has to be determined based on a funding gap analysis, the Member State has to conduct an ex post monitoring and has to put a claw-back mechanism in place.
58. Fifth, the aid must not have an undue negative effect on competition and trade. Aid for investments in vehicles using natural gas may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market or where it locks in certain technologies. Therefore, in those cases, the Commission considers that the negative effects of aid for vehicles and mobile service equipment using natural gas are unlikely to be offset.
59. Aid for investments in vehicles using the most polluting fossil fuels (diesel, petrol, LPG) is expected to generate negative effects on competition (lock in of cleaner technologies, displacement of investments into cleaner solutions) that are unlikely to be offset.
60. The aid should not incentivise beneficiaries to bring into service new vehicles where this would result in or aggravate existing market failures, such as overcapacity in the sector concerned.
61. When aid is granted to support an individual beneficiary or a limited number of beneficiaries and not via competitive bidding process, the Member State concerned has to justify the measure's design and demonstrate that the higher risks of competition distortion linked to the measure's design are duly addressed.

b. SGEI in the land passenger transport sector: Article 93 TFEU

62. As explained above, if the zero- or low-emission vehicles are necessary for the provision of an SGEI, its deployment may be considered as part of the SGEI mission.
63. Where an undertaking is entrusted with an SGEI in the area of land transport, Article 93 TFEU is directly applicable as a legal basis for establishing the compatibility of aid not covered by Regulation (EC) 1370/2007³⁷.
64. Article 93 TFEU provides that “*Aids shall be compatible with the Treaties if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service*”.

*c. SGEI Framework*³⁸

65. State aid for the acquisition of zero- and low-emission vehicles necessary for the provision of a genuine SGEI in sectors other than the land transport (*e.g.*, in the postal sector), may be assessed on the basis of the SGEI Framework, where the SGEI at issue does not fall within the scope of the SGEI Decision or the SGEI *de minimis* Regulation.
66. Under the SGEI Framework, which is based on Article 106(2) TFEU, an aid measure should comply with the following main conditions: (i) entrustment of a clearly defined and genuine SGEI, (ii) compliance with Directive 2006/111/EC,³⁹ (iii) compliance with EU public procurement rules, (iv) absence of discrimination, (v) a mechanism to avoid any overcompensation and (vi) transparency.

VI. References

- Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1.
- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.
- Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.01.2012, p. 3.
- Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, OJ C 8, 11.1.2012, p. 4.
- Communication from the Commission, European Union framework for State aid in the form of public service compensation (2011), OJ C8, 11.01.2012, p. 15.

³⁷ This provision constitutes the *lex specialis* with regard to Article 106(2) TFEU and lays down the rules applicable to public service compensation in the land transport sector.

³⁸ Communication from the Commission - European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15.

³⁹ Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, OJ L 318, 17.11.2006, p. 17.

- Commission Regulation No 360/2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.
- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.
- Communication from the Commission — Guidelines on State aid for environmental protection and energy2022, OJ C80, 18.2.2022, p. 1.
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- Guidelines on regional State aid for 2014-2020, OJ C 209, 23.07.2013, p. 1.
- Guidelines on regional State aid, OJ C 153, 29.4.2021, p. 1.
- Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.